IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4566 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VAJIBEN MEDHABHAI

Versus

JUNAGADH NAGARPALIKA

Appearance:

MR RC KAKKAD for the Petitioner.

NANAVATY ADVOCATES for Respondent No. 1

Ms.Punani, Assistant GOVERNMENT PLEADER, for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/08/2002

ORAL JUDGEMENT

1. Rule returnable today. Ms.Nanavaty, learned Advocate, appears and waives service of rule on behalf of the Junagadh Nagarpalika and Ms.Punani, learned AGP,

appears and waives service of rule on behalf of respondent No.2.

2. By filing this petition, the petitioner has prayed that the respondent-Nagarpalika may be directed to implement the Resolution dated 29th April, 2001, which is at Annexure 'C', page 11. The petitioner is the employee of the respondent No.1-Junagadh Nagarpalika. She gave an application on 5.4.1999 and by the said application, it was requested by her that because of her old age and indifferent health, she wants to retire voluntarily from the employment and the post which may fall vacant in view of her resignation, may be offered to her daughter-in-law, one Urmilaben Bipinbhai Jethwa. She has further stated in her application that till her daughter-in-law is appointed in the said post, she will continue on her post. Mr.Kakkad for the petitioner submitted that, later on, by way of superannuation, she retired from service on 30th June, 2002.

3. Thereafter, the respondent-Municipality has passed a Resolution, being Resolution No.158 of 2001, dated 29th April, 2001. The said Resolution is at Annexure 'C' page 11. It is provided in the said Resolution that a demand is made by the employees to the effect that on their giving voluntary resignation, their relatives may be absorbed in employment and that, even in the past, such employment was given to the dependants of the employees. In the Resolution, it is stated that there is also a request from the Union for giving such employment. Under such circumstances, the said Resolution was passed by the Municipality, by which 81 employees were given the benefit of employment to their dependants or near relatives. It is provided in the Resolution that the voluntary resignation of the aforesaid employees may be accepted and the dependants of such employes, whose names are also mentioned in the said Resolution, may be given employment. As pointed out earlier, the said Resolution is produced on the record. The petitioner also based her claim on the basis of the aforesaid Resolution and it is argued that since the petitioner is also willing to give voluntary resignation, her daughter-in-law may be provided employment. The petitioner has accordingly filed this petition for a direction against the Municipality to implement the aforesaid Resolution dated 29.4.2001, Annexure C', page 11 and and to give suitable employment to the daughter-in-law of the present petitioner.

4. On behalf of the State Government, Ms. Punani, learned AGP, has vehemently submitted that as per the

scheme framed by the Government, the benefit of employment can be given to the family member of a deceased employee, who might have died in harness while in employment, so that the family members of a deceased employee can make both ends meet in these difficult days. Any one member of such a deceased employee can be given compassionate appointment purely on compassionate ground. She submitted that there is no scheme or Rules framed by the Government to give employment even to the dependant of an employee, who is already in service, and who might be willing to offer resignation in order to accommodate another family member. She, therefore, submitted that no such relief, as prayed for by the petitioner, can be granted.

5. After hearing the concerned Advocates, I am of the opinion that the Municipality has clearly abused its powers by passing the aforesaid Resolution Annexure 'C'. It is difficult to appreciate the rationale and logic behind passing such Resolution. The said Resolution, in my view, is absolutely unconstitutional and is violative of Articles 14 and 16 of the Constitution of India. If this Resolution is to be given effect to, then, for all generations to come, the dependants and heirs of the employees, who are already in service, will continue to get employment in the respondent-Municipality for all time to come and, there may not be any similar post available to the other categories and those eligible persons will never get a chance to get employment in the respondent-Municipality. It is difficult to uphold the contention of Mr.Kakkad to the effect that moment the employee gives resignation voluntarily, Municipality should give employment to other family member of such employee. On the face of it, the aforesaid Resolution is absolutely unconstitutional and illegal. The respondent-Municipality is a Public Body and employment in such public body should be available to all citizens subject to certain restrictions about offering employment to reserved category, etc. This can never be said to be a Resolution giving benefit to the dependants of deceased employees under compassionate ground. If this Resolution is to be upheld, then, at no point of time any one except whose relative who is in employment with the respondent-Municipality will get chance of getting employment in the respondent-Municipality. So far as the salaries of the employees are concerned, the salary is paid from the Grant paid by the State Government. In my view, it was the duty of the State Government, therefore, to take appropriate action against the Municipality for passing such Resolution, which, on the face of it, is illegal and unconstitutional. It is a matter of pity

that the State has not take any action by way of staying the said Resolution.

6. Public employment should be available for all the citizens and they have a right to be considered for such appointment in the public institutions. An employee, who retires after putting qualifying service on reaching the age of superannuation, cannot insist that his dependents or other family members should be afforded employment by the institution. Such employee is entitled to get his / or her retiral dues and no other benefit, which is sought to be given by the said Resolution, Annexure 'C', can be given. Under the aforesaid circumstances, no effect can be given to the said Resolution in any manner and no benefit can be given to the petitioner on the basis of the aforesaid Resolution. It is a matter of regret that the Municipality has not tried to oppose the petition by filing the reply. It is obvious that the Municipality is interested in giving such illegal benefits by offering employment to the dependants of the employees. Since this Resolution, on the face of it, is illegal and arbitrary, it is for the State Government to take appropriate action for the purpose of staying the said Resolution by exercising appropriate powers under the Municipalities Act. Since the Resolution is not challenged by any one in this petition, this Court cannot strike down such Resolution, but it is for the Government or the Collector, as the case may be, to consider the validity and constitutionality of such Resolution once it is brought to its notice. I am sure that the authority will consider this aspect, with all seriousness. Suffice it to say that no relief can be granted to the petitioner on the basis of such a Resolution, which, on the face of it, is illegal, arbitrary and unconstitutional and in that view of the matter, no relief can be granted to the petitioner in this petition. Hence, the petition is dismissed. Rule is discharged with no order as to costs.

(P.B. Majmudar, J.)

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(apj)